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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,123	10/13/2005	Patrick Achenbach		1493

7590
Edward J. Smith
1 River Road, 43-219
Schenectady, NY 12345

EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT	PAPER NUMBER
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3743

MAIL DATE	DELIVERY MODE
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10/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,123	Applicant(s) ACHENBACH, PATRICK	
	Examiner Stephen M. Gravini	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

Claims 13-16, 21-25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway (WO 01/21956) in view of Yamac (US 4,890,395).

Lagerway is a switch cabinet. The current claim is construed under the structure and function of the features. The “adapted to” features don’t change the structure and function, because the prior art meets that structure and is adapted to perform the claimed functions. The claimed invention is reasonably and broadly construed in light of the accompanying specification as being disclosed by Lagerway as comprising:

a power generating wind turbine switch cabinet **4**;

at least one wind turbine circuit element (figure 6 page 9 lines 3-34) coupled to the power-generating wind turbine switch cabinet; and

a drying arrangement adapted to prevent water deposition onto the at least one power-generating wind turbine circuit element, the drying arrangement including an air flow device in close proximity to the at least one power-generating wind turbine-like circuit element generating an air flow moving past the at least one power-generating wind turbine circuit element to counteract the water deposition onto the at least one power-generating wind turbine circuit element (figures 5 and 7 and page 7 line 7 through page 8 line 2); or alternatively:

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controlling an operational parameter of a wind turbine by at least power-generating wind turbine one circuit element coupled to a switch cabinet (page 9 lines 3 through 34 an operation parameter includes wind, temperature, current flow, all disclosed in Lagerway); and

generating an airflow in the internal space of the power-generating wind turbine switch cabinet flowing past the at least one power-generating wind turbine circuit element using an air flow generating device to counteract a deposition of condensation water onto the at least one power-generating wind turbine circuit element (page 9 line 35 through page 10 line 28). Lagerway also discloses the claimed at least one heating device to heat an air in the region of the at least one circuit element (page 6 line 35 because it is inherent that the disclosed heating means the claimed heating device because it necessarily follows that heating occurs), cooling and drain elements (page 6 lines 14-29), and moving air past the cooling element (page 9 line 5). Lagerway further discloses heating an air in a region of the at least one circuit element (page 6 line 35 because it is inherent that the disclosed heating means the claimed heating device because it necessarily follows that heating occurs), separating water from the airflow at a cooling element, the cooling element spaced apart from the at least one circuit element, and draining the condensation water out of the switch cabinet by a drain element (page 6 lines 14-29), and generating the airflow, heating the air, and activating the cooling element depending on temperature or humidity within or outside the switch cabinet (figure 6). Lagerway discloses the claimed invention as rejected above, except for the claimed feature of either guiding means capable of directing the air flow from the

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air flow generating device past the at least one power-generating wind turbine-like circuit element or guiding the generated airflow past the at least one power-generating wind turbine-like circuit element by guiding means. Yamac, another dryer, discloses these features on the face of that reference. It would have been obvious to one skilled in the art to combine the teachings of Lagerway, with the teachings of Yamac, for the purpose of precisely guiding air flow and maximizing efficiency, while minimizing energy usage.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway in view of Yamac in view of Roethel (US 1,722,825). Lagerway in view of Yamac discloses the claimed invention as rejected above, except for the claimed cooling element to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet and the air flow generating device capable of the feature to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element. Roethel, another airflow apparatus discloses a cooling element **28** to separate water from air flowing by, the cooling element being spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet at page 2 line 15 and the air flow generating device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element at page 2 line 15. It would have been obvious to one skilled in the art to provide the teachings of Lagerway in view of Yamac with the cooling element to separate water from air flowing by, the cooling element being

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spaced apart from the at least one circuit element; and a drain element to drain the water deposition out of the switch cabinet and the air flow generating device to circulate air within the switch cabinet and to move air past the at least one circuit element and the cooling element for the purpose of efficient moisture free operation of electrical and mechanical equipment in a switching environment

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway in view of Yamac or Lagerway in view of Yamac in view of Roethel (depending upon which claim depends upon dependent claim 17). Lagerway in view of Yamac or Lagerway in view of Yamac in view of Roethel discloses the claimed invention as rejected above, except for the claimed Peltier element. It would have been an obvious matter of design choice to one skilled in the art to provide a Peltier element to the heating and/or cooling device since the claimed element would perform regardless of the type of heating and/or cooling element recited.

Claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway in view of Yamac in view of Streed (US 3,332,620). Lagerway in view of Yamac discloses the claimed invention as rejected above, except for the claimed humidity circuit element control device. Streed, another wind apparatus, discloses a humidity circuit element control device at column 3 line 10 through column 4 line 66. It would have been obvious to one skilled in the art to provide a humidity circuit element control device for the purpose of efficient moisture free operation of electrical equipment in a switching environment.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lagerway in view of Yamac. Lagerway in view of Yamac discloses the claimed invention as rejected above, except for the claimed Peltier element. It would have been an obvious matter of design choice to one skilled in the art to provide a Peltier element to the heating and/or cooling device since the claimed element would perform regardless of the type of heating and/or cooling element recited.

Response to Arguments

Applicant's arguments with respect to claims 13-28 have been considered but are not persuasive.

Lagerway in view of Yamac obviousness

Current Office practice guides examination such that claims are to be reasonably and broadly construed, in light of the accompanying specification. If the prior art is capable of performing the invention as claimed with the same structure and function, then the prior art can be used to reject the claimed invention. In this application, Lagerway teaches a machine housing 4 which comprising a generator 7 which is mounted around a conical bush 5 (please see page 3 beginning at line 2). Applicant argues that the claimed "power generating wind turbine switch cabinet" is disclosed in Lagerway, however the cited teachings supports the current Office practice regarding claim construction because the housing structurally functions as a switch cabinet which includes a generator.

Applicant further argues that the air flow device in close proximity is not disclosed in Lagerway. The fan 50 in figure 7 of Lagerway may be outside the generator chamber

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46, but it is in close proximity to the circuit element since both are on the same shaft.

With respect to the argued airflow, it is inherent that a rotating shaft inside a super atmospheric chamber will generate an airflow because the rotation of the shaft must rotate causing a surface of the shaft to break the non flowing air around it, which further causes airflow around the shaft. Since the shaft is inside the chamber, it "moves past" the circuit element as claimed. Finally, since the super atmospheric chamber pressure is bound by a seal strong enough to support a shaft but loose enough to allow a shaft to rotate, then a small amount of air is permitted to move past the circuit element, since the air from inside the chamber will flow out through the seals.

With respect to the "guiding means" argument, examiner has amended the rejection of that feature such that the teachings of secondary reference are capable of meeting the intended use of the air flow direction feature. In response to applicant's argument that the guiding means, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's argument that Yamac is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both prior art references, Lagerway and Yamac, teach structures and functions of

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drying such that the rejection is proper under current Office practice. For example, examiner has been instructed to construe a claimed clothes dryer drawer such that it can be properly rejected by a combination refrigerator drawer prior art reference with a kitchen cabinet prior art reference.

Lagerway in view of Yamac in view of Roethel obviousness

Again applicant argues that the intended use and non-related art should not be used to reject the claims. Using the arguments above, intended use and non-related art are not persuasive to overcome the prior art rejections.

Lagerway, Yamac, Roethel in view of Streed obviousness

Again applicant argues that the intended use and non-related art should not be used to reject the claims. Using the arguments above, intended use and non-related art are not persuasive to overcome the prior art rejections.

In response to applicant's argument that the examiner has combined an excessive number of references, reliance on a large number of references in a rejection does not, without more, weigh against the obviousness of the claimed invention. See *In re Gorman*, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view

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of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Other prior art references cited in this action disclose one or more features of the claimed invention, but are not relied upon in rejecting the claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272

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4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth B. Rinehart can be reached on 571 272 4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen Gravini/
Primary Examiner, Art Unit 3743